Gold Kist, Inc., Florida Poultry Division *and* Robert T. Richardson, Jr., Petitioner and United Food and Commercial Workers International Union, District 442, AFL–CIO, CLC. Case 12–RD–681

September 30, 1992

ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

This case has been delegated to a three-member panel. The Employer's request for review of the Regional Director's administrative dismissal (relevant portions of which are attached) of the instant petition raises no substantial issues warranting reversal of the Regional Director's action. Accordingly, dismissal of the petition is affirmed.

APPENDIX

On or about March 2, 1992, [the Regional Director] issued an Order to Show Cause[1] why the petition herein should not be dismissed on the grounds that the petitioned for unit is not coextensive with the existing unit as required by Board policy. (See *W. T. Grant Co*., 179 NLRB 670 (1969).) [Robert T. Richardson, Jr.] and the Employer responded to the above-mentioned Order and subsequently United Food and Commercial Workers Union, District 442, AFL–CIO, CLC (Union) submitted a Motion to Intervene and a Brief in Support of Dismissal. All of these documents have been considered together with the prior history as reflected in official Board documents.

The petitioned for unit (Live Haul unit) was originally certified on or about August 16, 1971, in Case 12–RC–3902. Previously on or about September 1, 1970, a separate production and maintenance unit had been certified in Case 12–RC–3639. On or about November 7, 1978, Acting Regional Director Moser issued a Decision and Direction of Election in Case 12–RD–393 directing an election in a unit including both the production and maintenance and live haul employees. The aforementioned Decision and Direction of Election states, in agreement with the parties at the time, that the originally separate units of production and maintenance employees and live haul division employees had been effectively merged into a single bargaining unit since the collective-bargaining agreement negotiated in December 1975. The Decision and Direction of Election also states that although some provisions of the collective-bargaining agreement such as rates of pay, lay off and recall, seniority, and daily work limitations were applicable separately to each group, these provisions only reflect a recognition of the different functions of the two groups of employees. Both groups of employees enjoyed the same fringe benefits, the same grievance procedures, the same disciplinary procedures, the same overtime provisions, the same leave provisions, and the same pension and insurance benefits. On or about January 8, 1979, the Union[2] was certified as the representative in the combined production and maintenance and live haul units in Case 12–RD–393.

Subsequently, on or about December 16, 1985, the Union was again certified in the combined production and maintenance and live haul unit in Case 12–RD–573. All parties stipulated to the aforesaid combined unit being the appropriate unit.

In spite of the history of a merged unit, [Robert T. Richardson, Jr.] and the Employer contend that the Live Haul unit should and does exist as a separate bargaining unit because of differing provisions in the most recent collective-bargaining agreement pertaining to live haul employees as opposed to production and maintenance employees. The Employer also contends that the recognition clause itself in the most recent contract refers to ''both units'' and cites the separate certifications which indicates the intent of the parties was to maintain separate units. The Union, on the other hand, contends that the recognition clause shows just the contrary as it merely recites the certification history including the recertification as merged units in Case 12–RD–573.

It is true that there are differences in the treatment of Live Haul employees vis-a-vis production and maintenance employees in the most recent collective-bargaining agreement (effective April 1, 1989, through April 1, 1992). However, these differences were also present in the collective-bargaining agreement in effect from December 1, 1981, to December 1, 1984, prior to the parties stipulating to a merged unit in Case 12–RD–573.[3] It is also noted that the recognition clause in the 1981–1984 agreement recited the certification history and referred to ''both units,'' but also cited recertification in the merged unit. The Employer cites *Heck's Inc*., 234 NLRB 756 (1978), and *Duval Corp*., 234 NLRB 160 (1978), contending that the recognition clause shows the parties intent to maintain separate units. However, in the circumstances herein that does not appear to be the case where the same language was in the 1981–1984 agreement, before both the parties' stipulation to a merged unit and the citation in the most recent recognition clause of Case 12–RD–573. A reference to units as plural is not sufficient to require a finding of separate units where the history shows a merged unit (see *General Electric*, 180 NLRB 1094 (1970)). Finally, although there may be factors showing a separate community of interest between the production and maintenance employees and the Live Haul division employees that may be relevant in an initial representation case, these factors are not relevant in a decertification case where the evidence shows

[1] The order also postponed indefinitely the hearing scheduled in this matter.

[2] At that time the Union was named Meat Cutters, Packinghouse & Allied Food Workers, District Union 433, AFL–CIO.

[3] In the 1981–1984 agreement the live haul department was referred to as the trucking department; otherwise the provisions referred to by the Employer in the 1989–1992 agreement have identical or almost identical language in the 1981–1984 agreement. For example, language in Article 9, Section 7 of the 1989–1992 agreement providing for separate seniority in the plant and live haul departments is identical to language in Article 9, Section 8D in the 1981 to 1984 agreement. Articles 2, 4, 11 Section 6, 14, 15, 21, 27, 28, 37, 41, and 43 are identical or nearly identical in both agreements. Article 20, Wages, refers to Appendix A for plant employees and B for trucking (live haul) employees in the 1981–1984 agreement. In the 1989–1992 agreement, Article 20 refers to Appendix A, Production, Appendix B, Maintenance, and Appendix C, Live Haul Department.

a long history of merged units up to and including the most recent collective-bargaining agreement.

Accordingly, it is concluded that the petitioned for unit is not coextensive with the existing unit (*W. T. Grant*, supra, et al.). Therefore, further proceedings herein are deemed unwarranted and I am dismissing the petition in this matter.